



## **JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY**

**November 14, 2013**

### **Room 643 of the Legislative Office Building**

The Joint Legislative Oversight Committee on Justice and Public Safety met on Thursday, November 14, 2013 at 1:00 PM. The meeting was held in Room 643 of the Legislative Office Building. Members present were: Representatives Boles, Burr, Daughtry, Faircloth, C. Graham, G. Graham, Hurley, McNeill, Stevens, Turner, Dobson, Jordan, Speciale; Senators Allran, Bingham, Bryant, Daniel, Goolsby, Newton, Randleman and Soucek.

The following staff members were present: Kerry Guice, Joseph Kyzer and Debbie Holder, committee clerks; Kristine Leggett, John Poteat, William Childs and Lisa Fox, Fiscal Research Division; Hal Pell, Susan Sitze, Brenda Carter and Kelly Quick, Research Division; Emily Johnson, Legislative Drafting Division.

Senator Thom Goolsby presided and called the meeting to order at 1:03 PM. Chairman Goolsby said the vote on the minutes would not occur until the committee had a quorum. He said the committee would start with opening remarks by the chairs, and referred members to the minutes from the last meeting to review. Chairman Goolsby said moving forward the minutes would not be printed out but would be available online at the committee's Web site. Chairman Goolsby also reminded attendees and listeners that all materials and presentations from the committee are uploaded to the Web site prior to the meeting. Chairman Goolsby also asked anyone presenting in the future to submit materials in a timely manner that allows staff to post them online. Chairman Goolsby took a motion from Rep. Stevens to vote on approving the minutes and the vote passed unanimously.

Chairman Goolsby recognized Rep. Boles for remarks. Rep. Boles welcomed the members and attendees and thanked the Department of Public Safety (DPS) for the members' tour of the Caledonia Correctional Institution and Tillery Correctional Institution. He said it is quite impressive and he wished all the members could have attended.

Chairman Goolsby thanked Rep. Boles and noted that John Poteat from the Fiscal Research Division brought back a turnip from the trip. Chairman Goolsby noted that almost a ton of turnips were harvested for food banks. Chairman Goolsby recognized Rep. Hurley for opening remarks.



Rep. Hurley said she had a wonderful time on the trip and that she learned they don't use the turnips, just the greens. She thought that was interesting and said all members should join the chairs on future trips.

Chairman Goolsby also encouraged members to attend if they have the time and ability to go and see how things actually work. He said the committee would move to the first item: Alcohol Law Enforcement (ALE) reduction and mission reports and the committee would add Secretary Frank Perry to the agenda. He recognized Kristine Leggett from the Fiscal Research Division for a staff overview of the first agenda item.

Ms. Leggett thanked Chairman Goolsby and said two reports are included in members' materials that were provided by DPS regarding the ALE. She said the first is a report on the ALE's mission and the second is a report on the management of the \$1.75 million reduction for ALE included in the budget last session. She said the chairs asked fiscal staff to frame the presentations for the committee, so she is a preview for the main event. She said some members on appropriations subcommittees may have already seen some of the presentations, but she would provide context for all members. (See Attachment 1 for a copy of the presentation).

Chairman Goolsby recognized Timothy Dale from the Fiscal Research Division to present further information to the committee. (See Attachment 2 for a copy of the presentation).

Chairman Goolsby recognized Secretary Frank Perry from the Department of Public Safety for brief remarks. Secretary Perry thanked John Poteat for bringing a turnip to the committee and the committee members for allowing him to speak. He noted that on the previous Saturday night three young people died in Harnett County, with two more critically injured in a brutal car accident. He said it is a clear reminder of the importance of ALE's work. In May of this year they selected new leadership at ALE that looked carefully and thoughtfully at the historical work and mission of ALE. As a result, a refocused mission is dedicated to the concept of addressing the source of the problems developed. The refocused mission consists of working with ABC permit holders, encouraging voluntary compliance with ABC law. They work with sheriff's offices, police departments and federal agencies to identify ABC permit holders engaged in all types of criminal activity in our communities. Educational programs for ABC permit holders and recognizing fake IDs while protecting against over serving are also part of the refocused mission. Finally, he said they are developing educational programs for youth and civic organizations regarding the dangers of underage drinking. Law enforcement commissioner Greg Baker, then ALE director and responsible for the mission refocus, will present that concept today



as he has done for many members personally in the past. Secretary Perry asked Commissioner Baker to address the committee and thanked committee members.

Chairman Goolsby recognized Greg Baker, Commissioner of Law Enforcement for DPS. Mr. Baker thanked Chairman Goolsby and addressed the committee. (See Attachment 3 for a copy of the presentation).

Chairman Goolsby thanked Commissioner Baker for his remarks and took questions from the committee. He recognized Rep. Stevens to begin discussion following the presentation.

**Rep. Stevens:** Thank you Mr. Chair and thank you for your presentation. I was concerned about the three or four different places where you're constantly having problems. At any point, do you use our nuisance law to try to close these places and keep them closed? If not, do you refer that to your locals to try to get these facilities closed?

**Commissioner Baker:** Yes ma'am, thank you very much. We do use it. As you are aware I'm sure nuisance law is a great tool, but it does have some consequences. If we pursue these charges with the local DA and the county in which the abatement activity is occurring, if the state loses that case, they absorb the cost for the whole trial and all the costs associated with it. We do use the statute, yes ma'am we do. We've used it successfully and to my knowledge we have not lost any of those cases. But typically, interestingly enough, we find, we found this in Sen. Goolsby's district actually. We had a problem establishment down on the waterfront called Brickhouse. It was a constant source of problem for the local police department. We engaged with them, we sent undercover agents in to videotape what was going on inside, we had agents on the outside. It didn't take long – the gang activity erupted just like it did every weekend. We took the action and cleared it up. The next day, we met with the owner of the building, and we met with the district attorney and chief of police. We showed the owner of the establishment the videotape and he immediately evicted the tenant. Now there's a tenant in there that wants to do the right things and be a benefit to the community. That's what we most often find, is that they will voluntarily surrender their ABC permits to avoid the nuisance abatement. So yes ma'am we do use it, a lot of times we don't follow through with the actual prosecution of it because the permit holder themselves will voluntarily surrender their permits.

**Rep. Stevens:** I know in the short time I've been down here we've tackled the nuisance issue twice, in terms of making some provisions and making it clear. Is there something more we need to do to help you with the nuisance laws so perhaps it's not quite so risky, or so that it's entirely clear that you acted in good faith and therefore maybe not be taxed with the cost? Is there



something that we need to do? It may be something that you just want to get back to us privately on, but that's just a thought.

**Commissioner Baker:** I think that the district attorneys across the state would be happy to participate in that, and we would certainly like to talk to you more about that. Again, the consequences of the loss of the action are the primary concern with the utilization of that statute.

**Chairman Goolsby:** Thank you, we are going to go to other questions but I have one in the meantime. The \$700,000 in grants that were received, those went to fund positions that were cut in the budget, is that where that money went?

**Commissioner Baker:** They would have been potential cuts sir. They funded 9 positions for the ABC enforcement and 3 that would support our training.

**Chairman Goolsby:** Were those new positions or were those back filling old positions?

**Commissioner Baker:** Those were to support existing positions to keep us from losing those positions.

**Kristine Leggett:** Thank you Mr. Chair, just to clarify it's a cost shift sir. They were General Fund supported and now they're receipt supported.

**Rep. Hurley:** Thank you Commissioner Baker. My question is: I think that the lottery was supposed to go online maybe with memberships. What oversight or jurisdiction, or will you have anything to do with that situation since the lottery laws come under you?

**Commissioner Baker:** Yes ma'am, thank you. We certainly, we have \$1 million annually in receipts-based funding that we receive from the lottery. I'm not sure exactly what effect the online will have on us. We will certainly work with the commission in any way we can, any criminal activity, anything that derives from that we will certainly have primary jurisdiction on it.

**Rep. Faircloth:** Thank you Mr. Chairman. Commissioner Baker, thank you for your report. Can you give us a little information about the current structure and function of local ABC units funded by local ABC systems? It's my understanding that over the years, what started out as county ABC or local ABC units, which did a lot of what you're talking about in the counties, slowly evolved over to the ABC department or the local ABC unit or commission, funding that money to a local law enforcement agency which they could use for ABC enforcement or send



their officers to something else. My feeling is that probably dilutes some of that local ABC enforcement. Can you give us a feel for how effective that local program is now, if there's anything we could do to upgrade that process to help you out?

**Chairman Goolsby:** We may also let Gov. Gardner address that question too, that might be good. Go ahead Commissioner Baker.

**Commissioner Baker:** Thank you Mr. Chairman. Yes sir, we have critical partnerships and relationships with local ABC police, mostly in the larger metropolitan areas. They do an exceptional job, I guess an outside person looking at it would see a duplication of effort there. To us, the way we view it at ALE is as a partnership. There are plenty of permits there to check, there's plenty of problems there to address, so it's a welcome partnership. There is some concern sir in the local areas about pushing that authority out to local agencies, and the concern is with everyone that we get fair and uniform enforcement of ABC laws from Manteo to Murphy. That's everyone's concern. Our concern, by pushing it to local agencies to do it, is most typically they're not familiar with ABC law as intimately as these people are that do it every single day. They're not as knowledgeable as a local ABC officer that does it in their large metropolitan areas. So that's our concern, sir, is that we're not getting that fair and uniformed enforcement. Then if you want to go down further, who got the contract? Is it somebody's brother-in-law? There are all types of things that we can get into. We don't have any indications that that's occurring but sir it's a concern. Thank you for pointing that out. It's something that we lose sleep over. Yes sir.

**Rep. Burr:** Thank you Mr. Chairman. Commissioner Baker, thanks for being here today and for what you're doing and the presentation. I just wanted to, you mentioned I had an opportunity to kind of ride along not too long ago at an event that you all had in Asheville. I would encourage other members to talk with Commissioner Baker and do that as well. It's an excellent opportunity to see what the men and women at ALE are doing. The particular event that I was able to watch spawned from some issues with a facility, an establishment that had had some complaints. I believe there was an undercover agent in there and spawned into a drug ring and other things going on outside of the bar. It certainly is good for North Carolina to have these men and women out doing what they're doing. I would encourage you to take an opportunity and sit down with any of your local ALE agents and try to ride along and participate with them and see what they're doing. These are folks that, that night they were up late way after midnight, and many of them drove back from the western part of the state back home to where the agents



live and I'm sure went back to work the next day. They're working hard for the state, so thanks for what you're doing.

**Commissioner Baker:** Thank you sir, thank you very much.

**Rep. C. Graham:** Thank you Mr. Chair, I just have a comment. Thank you for your presentation. Mr. Baker, I also had the same experience about a week ago to ride with ALE and I appreciate them extending the invitation for me to ride with them. I went out last Friday night and stayed out about 6 hours and rode with the agents. I just wanted to say I was very impressed with their professionalism and the way they worked as a unit. Now they were in my county because obviously law enforcement had asked them to come in and look at some things. Obviously they did and they looked at specific areas and some of the things you just talked about are things I experienced. I just would like to encourage the members of the committee, if you get a chance to go with ALE one Friday night or Saturday night or whenever, take that opportunity. But I did see surveillance from problem establishments. I did see drug activity. I saw through binoculars people exchanging drugs. I did see underage drinking. I experienced illegal guns. It's so amazing how one thing leads to another. And your agents, when I read your authority, you have a far reach to do these kinds of things. I had an opportunity to experience that. I saw prescription drug use, which I have a real concern with in my county and across the state. You know, you suspect one thing but you get something else or something in addition to that. Your agents did a great job feeling those situations out, searching those vehicles and getting to the bottom of that situation. Folks driving with a suspended license, I mean it was amazing the type of things I experienced and the professionalism your agents used to make those arrests. Outstanding warrants for people who are driving vehicles under the influence of drugs, maybe prescription drugs, alcohol, and they already have a record. The sheriff is looking for these guys, and I experienced your agents having the opportunity to put those guys in their car and take them down to jail to get them off the street. So I just want to commend you and I would encourage the members of this committee to do the same things. It was just a learning experience and I welcome the opportunity another night. Thank you for your service, and I want to thank the agents for their service and putting their lives on the line to keep our counties and our state safe. You're doing a great job, thank you sir.

**Commissioner Baker:** Thank you sir.



**Rep. Boles:** Thank you Commissioner Baker for being here today. A couple of slides back you mentioned that the agents are doing the inspections. Is that, I thought we had changed that ABC is doing the initial permitting? Can you explain or talk about that a little bit?

**Commissioner Baker:** Yes sir I will, thank you very much. We're still doing the inspections. We do the inspections sir, the commission does not do inspections. What they do is the initial site visit on the application for a permit. Someone needs to go out and confirm that there is brick and mortar standing there and the person whose name is on the permit has a valid ID to present. That's all they do. We still do, even on the application; we still do the background check. We still are the repository for all of the information. And I don't want to diminish the significance of that, because while it is civilian work and we think it is a very cost effective and efficient way to do business - it allows the gun toter and the badge carrier to do enforcement action and gives it to civilian work – it takes considerable amount of time cumulatively when you look at it over the course of an entire year how much time it would take away from our agents. It's a very important part of our process. But yes sir, thank you I meant to mention that and I appreciate you bringing it up. They just do the initial site visit on the application for the permit. We do all the inspections.

**Rep. Boles:** So, would the agent, the sworn officer, go out to the site or is his work inside the office?

**Commissioner Baker:** Well it frees the agent up to do criminal investigations and to work on problem establishments. So when the ABC commission gets a permit and somebody wants to open up a restaurant and serve alcohol, the initial site visit will now be done by an ABC employee. They go out and confirm. If they go out and see there's a problem, in other words let's say the person whose name is on the permit is not present and can't be located, they bring that back and give that to an ALE agent who will take that then and pursue that from a regulatory or a criminal matter. So the only thing that the ABC employee does is the initial site visit for the new permit application.

**Rep. Boles:** Thank you Mr. Chair. You have a new director, is he with us today?

**Commissioner Baker:** Yes sir he is and I was going to end with that. We have Mr. B.W. Collier, he's in the back. B.W., stand up just a second there. We're honored to have B.W., he's a career law enforcement agent. He spent about 26 years with the State Bureau of Investigation. He comes from a very proud law enforcement family. His father was a retired state trooper. He



has a daughter at the United States Naval Academy and we're honored to have B.W. and we think he's going to take ALE to heights that they've never been. So thank you sir for doing that.

**Rep. McNeill:** Thank you Mr. Chairman and Commissioner Baker thank you for your presentation. Going back just a second to the \$700,000, and I apologize if this is something we're going to cover later, but I noticed from the memorandum that we have that that \$700,000 going for those positions will be abolished if the legislature, well when the money runs out. I would like to make a statement and ask you a question also. I would like for you to somehow prove to this oversight committee what's going to happen if you lose those positions, if we can't find the \$700,000 somewhere to fund those. Also, if you would I noticed also in the memorandum that you're able to achieve a lot of these cuts from the \$1.7 million by shifting a lot of them to receipt support. But I did notice you were eliminating 10 positions. Please explain to this committee what the practical effect that's going to have on your operations to reduce those 10 positions.

**Commissioner Baker:** Thank you sir, I appreciate that opportunity and the question very much. Yes sir, as you pointed out we have 12 positions that moved to receipts-based funding. Nine of which went to the ABC commission and 3 to the grant from Governor's Crime Commission. We had another 10 positions, I believe it was 10. Wait one second I have them and I'll count them. We moved 3 positions to lottery for receipts-based, we had one to the boxing commission, receipts-based. We abolished five agent positions, one supervisor position and four law enforcement manager positions. The consequences of the abolishment of the positions, those were vacancies that existed that we weren't able to refill trying to meet the reduction. What we have now are consolidated districts. You saw the map where we have 9 district offices. Those have now, we have essentially 6. While the district office still exists, we don't have a special agent in charge in those district offices. So now we have districts 1 and 2, for instance, we have district 1 being managed by the district 2 special agent in charge. That's very problematic for us. We're concerned about our ability to serve law enforcement local requests from the sheriffs' office and the police departments often of which we are the only state representation there. So we're very concerned, but we're also very optimistic that by coming here today, by the ride along programs, the legislators who have experienced first-hand what we do, that we are executing on this very important mission. That we do know what our mission is and it's alcohol enforcement. We're very optimistic sir that we're going to be able to work with the legislature and the General Assembly and find those funds. But thank you very much for that opportunity.





**Sen. Allran:** Thank you Mr. Chairman. My question is in regard to underage drinking and the fake IDs. Do you think as a state we're making any progress in combating the use of fake IDs for underage drinkers, or is it getting worse?

**Commissioner Baker:** Worse. Just to answer it fully, thank you for that question. China is a major importer of fake IDs, obviously with all the benefits of the web there are some problems with the web. One of which is that these kids can go out and order these IDs, principally coming from China and a lot of them coming from Canada that are perfect. They are very, very difficult to tell that they are fake IDs. We do the very best that we can with our BARS program educating these permit holders of what to look for to determine a fake ID. But senator to answer your question, it is getting worse.

**Sen. Allran:** What is required to be used for an ID to drink?

**Commissioner Baker:** A valid state ID.

**Sen. Allran:** Does that mean a driver's license?

**Commissioner Baker:** A driver's license, yes sir.

**Sen. Allran:** So you do have to have a driver's license.

**Commissioner Baker:** Yes sir.

**Sen. Allran:** So even though we have these really sophisticated driver's licenses, your point is that they're duplicating those.

**Commissioner Baker:** Yes sir, they have very sophisticated measures to duplicate those. And they look good, they look very good. It's a problem for us, it's a continuing problem, but through education and hopefully some support of district attorneys, we have a couple of district attorneys around the state who have taken a very, very tough stance on the utilization of fake IDs. I believe one is in New Hanover County, who has said if you get caught with a fake ID we're going to suspend your actual driving privileges for a year. It is a very significant issue for us.

**Susan Sitze:** Just to make a clarification, senator, the state does issue state IDs that are not driver's licenses. So I don't want you to think that literally everybody has to have a driver's



licenses. If it is a valid state ID that is not also a driver's license, that also is an acceptable form of ID.

**Commissioner Baker:** Thank you.

**Sen. Allran:** Are we getting to the point where we're running out of ideas on how to fight this problem? I mean the legislature I think is always receptive of hearing what people have to say about what we should do next. It seems like it's just a running battle.

**Commissioner Baker:** It is, I think that the legislature is always receptive on what they can do to engage in this. My experience in my short tenure here has been that every door that I've wanted to get in has been open for conversation. Obviously that's very important. I think some of the responsibility has to be at the local level, with the district attorneys and their willingness to engage. I think it's education programs so parents are aware what their children are doing online. Everything can't be solved by you and it can't be solved by us. But what we can do is we can engage them through educational programs, I think of which you'll hear from Chairman Gardner today. He has a comprehensive strategy which we're very much engaged in to educate parents what to look for and what their children are doing. It's a very complex issue and the solution to it is very multi-faceted as well.

**Sen. Allran:** There's kind of a truism or conventional wisdom out there that says on some of these college town campuses, some of the big university campuses, that quote everybody has a fake ID. Is there really a universal thing or close to it, or is that just an exaggeration?

**Commissioner Baker:** I don't know about everyone, I steer clear of absolutes.

**Sen. Allran:** That's hyperbole, but still.

**Commissioner Baker:** There are a lot of fake IDs on college campuses, yes sir. I know if you talk to the chiefs of police from the campuses you will probably hear that it's pretty close to everyone has a fake ID that's not of age. That is not of legal age. It is a major problem, it's a continuing problem. A tougher stance at maybe the county level is part of the equation so that there are consequences. That there are actually consequences for producing fake identification to engage in this activity is always good. So yes sir, thank you very much for the question.

**Rep. Boles:** Commissioner Baker, I'd like for you to talk about some of your seized assets. Do you have a dollar amount, has that increased or decreased? I guess the concern I have is that I



think you're not able to get a lot of seized assets through alcohol enforcement as much as other drug enforcements. Correct?

**Commissioner Baker:** Yes sir. Thank you for the question. Seized assets, just for clarification Rep. Boles, are you looking for the dollar amount that we have on hand now?

**Rep. Boles:** Well what do you normally average a year, or do you have a savings account? I know these assets or dollars are not able to be used for employee or operation, but if you could talk about what the money could be used for and what your budget has been or what you've seized.

**Commissioner Baker:** Yes sir, I think we have some of the staff here that might be able to help with that. Roughly, about a million dollars on hand right now? Two million on hand right now. And you're correct, most of those seized assets do not come through an alcohol enforcement effort. In other words, if we go out and hit an illegal outlet, someone who's got a shot house going, the revenue generator on that is not significant. Most of those seized assets do come from our involvement on federal task forces, but what once again our involvement on federal task forces is to address the permitted establishment. So if we have a drug organization that DEA has identified that's laundering drug assets through an ABC permitted establishment if we work that case with them it's us, DEA and the Wake County Sheriff's Office that works the case. Whatever assets are seized at the end of that case, let's say it's \$1 million, then it would be divided equally. DEA would take the first 20% of it for processing the administration fee and the remaining 80% would be distributed among the participating agencies. So that's how the equitable sharing occurs, and most of those assets are seized as a result of our participation in those task forces. The reason that's critical to us from a funding standpoint is ALE doesn't get a car budget. That's critical. They're non-recurring, and we can never estimate or guesstimate how much assets we're going to seize throughout the course of the year. It's very problematic when trying to plan for the replacement of vehicles, buying bullets and vests, all the things that we need to perform our duties. Annually, I can get you that number, but I hate to guesstimate. I can give you a five-year period if I can get back to you and tell you how much we've seized over it. And I apologize I don't have that information right here.

**Chairman Goolsby:** Chairman Boles, we'll go ahead and direct staff right now to get that information for us for the past 5 years up to the current date on the money seized under Operation Fair Share that's gone to the feds for collection and how much has gone back to ALE. If y'all would, take care of that. Thank you. Anything further sir?



**Rep. Boles:** I'd just like to clarify that with the seized assets, you're able to buy your equipment as you said, bullets, vehicles, etc., whereas before that was probably part of your General Assembly budget to operate. Now you're able to use the additional to supplant? Not supplant, I've been told don't use that word. But to use other dollars.

**Commissioner Baker:** Yes sir, that would be my guess. We saw the chart of the budget and how it's gone so obviously those seized assets have taken on more significance in our ability to pay those bills if you will.

**Sen. Newton:** Thank you Mr. Chairman, thank you Commissioner Baker for being here. I want to echo a little bit about what others have said. I appreciate your efforts since you've been on board trying to reach out to the legislature and make sure there were good lines of communication and everybody was on the same page moving in the same direction. I personally appreciate that and look forward to continuing to work with you and Mr. Collier in the months and years ahead. One thing I would ask, Mr. Chairman, is on that question about the forfeiture, before I forget, if we could also ask them to provide a breakdown of what moneys have been spent and how they've been spent. Just broad categories, so we understand that picture more clearly.

**Chairman Goolsby:** So directed, staff. If you would comply with Sen. Newton's request.

**Sen. Newton:** My question, and I apologize if you did make this clear and I missed it since I came in a little late: The \$700,000 we talked about and you were talking about earlier, looking at the slide, if I understand correctly \$500,000 of that is a contract from a contract with ABC. I apologize if I missed it, my colleagues beside me were trying to help me figure it out. Exactly what is it that ALE is doing for the \$500,000 for ABC? What's the contract for?

**Commissioner Baker:** Normal ABC enforcement; just carrying on our mission, being able to execute our staff's core mission of ABC enforcement. That's 9 positions that would have gone away had we not gotten that funding from the commission.

**Sen. Newton:** If you said this before, and I don't want to leave with the wrong impression; is that a new, or I say new a relatively new arrangement between ALE and ABC? Or is this something that has been going on for quite some time.

**Commissioner Baker:** It is new in this fiscal year, yes sir.

**Sen. Newton:** Thank you sir.



**Commissioner Baker:** Yes sir.

**Chairman Goolsby:** Mr. Pell was just pointing out to me that most committee members probably know, or at least us lawyers do, that if the money is seized by the state of course it goes to the school boards. But typically this money seized in a joint federal task force goes through Operation Fair Share where the feds do the collection through usually the Raleigh office right here. Twenty percent goes to the feds for doing the work and then the remainder of that money is returned to the agencies that worked with them. Just wanted to make sure that was clear.

**Rep. Burr:** Thank you Mr. Chairman. I just wanted to kind of follow-up, Rep. McNeill brought up a while ago as well talking about the actual dollar amount that you're getting right now in grants and what would happen if that went away. In terms of over the next year, if you were to lose those grants as additional dollars you're receiving and any reduction through the General Assembly, how many actual positions are you talking about losing and can you kind of talk about what, if any, impact that will have on your mission?

**Commissioner Baker:** Yes sir, it will be twelve additional positions that will go away if just the \$500,000 from the commission and of course the \$200,000 from the grant funding does go away. So that totals 12 positions. Depending on, if you go by the philosophy of last in, first out, your most junior agent and work towards your most senior agent, that number may increase a little bit more. But roughly those 12 plus the ones that we've already lost that we weren't able to fill. Once again, a catastrophic effect on our ability to execute on our mission. The numbers kind of speak for themselves as you witness firsthand with roughly 18,500 permitted establishments in this state holding roughly 60,000 permits, ALE being the primary enforcement arm for the Alcohol Beverage Control commission. You take 83 guys trying to cover 100 counties right now, if you diminish that even further by 12 positions it's a catastrophic effect yes sir.

**Chairman Goolsby:** About a 10% reduction, 11% reduction in total numbers it looks like.

**Rep. Burr:** One follow-up, different subject. The ride along that Rep. Graham and I participated in, I assume most of the equipment ALE is using, and it kind of goes along with some of the other questions, that the equipment wasn't paid for with taxpayer dollars? It was paid for through these raids and the other activities you all are doing through what you're seizing? Is that good?

**Commissioner Baker:** I would say that's a fair statement. With an \$8.7 million appropriated budget in 2012 and \$8.1 million of that being salaries, \$600,000 to run a statewide operation



with 9 district offices, light bills, water bills, all of that has to be paid with \$600,000. So you can see the receipts-based funding from the lottery, the asset forfeiture money from federal seizures becomes critical.

**Rep. Hurley:** Thank you again Mr. Chair and commissioner. Thank you for your presentation, I think you've made things clearer for all of us today. I want to go back to the vehicle no-budget. We do not fund those, you get them through forfeiture because we do not fund them. Are they in the pool? When something happens to them, who takes care of those? Do you take the gas money, do we fund that? Also, in your office, do we fund in your budget the office equipment and office supplies and all that stuff? Or, do you have to do that through forfeiture?

**Commissioner Baker:** I can't tell you exactly what dollars we spent on routine office equipment. I can get you that number and would be happy to do that. Again, probably the best number I can give you is the \$8.7 million appropriated budget and \$8.1 million of it salaries, so we have \$600,000 that we spend on necessities. The rest of that has to come from receipts-based funding and/or supplemented by the asset forfeiture.

**Rep. Hurley:** I think that answers my question, thank you.

**Rep. Boles:** Thank you Mr. Baker. In North Carolina, we have the state ALE, correct? Then we have local ABC that has ABC enforcement divisions as well. Correct?

**Commissioner Baker:** Yes sir, that is correct.

**Rep. Boles:** So is it fair to say that we don't have just 83 agents in the state enforcing the ABC laws? And, if I could get a total of the ABC commission police, I think Cumberland County, Wake County, Mecklenburg, they have their own ALE or ABC enforcement division?

**Commissioner Baker:** Yes sir, they do.

**Rep. Boles:** Ok, do we know what the total number of their agents with our agents that are enforcing ABC laws in the state of North Carolina?

**Commissioner Baker:** The chairman may have that number for you; I don't have the local ABC officer number Rep. Boles. We do have 83 ALE agents working. How many local ABC officers there are I don't know, the chairman may have that information for you in his presentation.



**Chairman Goolsby:** Chairman Boles, I'm also aware in my own county I know that we have ALE agents, we also have deputy sheriffs, several of whom I've met, who are funded I believe by local ABC money. So what I might direct the staff to do is to find out for us how many agents, both local law enforcement specially dedicated ABC funded positions and all those that we currently have across the state. Is that sort of where you're going with that?

**Rep. Boles:** I am, I wanted the public to understand that there's just not 83 agents enforcing all ABC laws in the state of North Carolina right now as it's being portrayed.

**Chairman Goolsby:** We'll see to it that we have those figures when we come back at our next meeting. I guess Rep. Hurley will be chairing, and we'll direct staff to have all of those figures available for all the committee members so we know the total number of enforcement officers we have across the state, both local and county and even special detail officers that are funded specifically to enforce our alcohol beverage laws. Is that correct sir?

**Rep. Boles:** Correct, and I do understand they probably do not have the powers that you all have, as far as being a local whereas you are state. But they're still able to enforce the North Carolina General Statute ABC laws.

**Chairman Goolsby:** And we can always help them. Thank you, any further questions from committee members? I do have one question if you know the answer. You may have to consult staff on it. There's been a big issue down my way, and I know I spoke to Gov. Gardner about it, about the new letter that has gone out from ABC involving the private clubs and the fact that we're actually going to now enforce our private club laws that in the past have maybe not been enforced as they should have been. Can you speak a little bit on what differentiates a private club from a regular bar, regular ABC establishment, and then what we're doing right now and some of the pushback I guess you're getting from the private club owners that heretofore have not been operating under the mandated state requirements, the benefits they receive for that and what we're doing now in our enforcement efforts. And I would just point out, the problem we had in Wilmington with the stabbing and the establishment you talked about that's been closed down, that now we have a nice pizza place going in there. You all were instrumental in helping us get that shut down. That was a private club that was not being run properly. I'm just curious because that is a big thing for me down home and it may be also for a lot of the other representatives and senators here.



**Commissioner Baker:** Thank you Mr. Chairman. Specifically the difference is the nuisances by the rules of the commission. I don't know if I'm going to be as conversive in it as the chairman is with regard to the distinction between a private club and just a regular permitted establishment.

**Chairman Goolsby:** Again, we can get Gov. Gardner or one of his folks to address that but whatever you can address on that would be helpful.

**Commissioner Baker:** Yes sir, thank you. I can tell you Chairman Gardner's concern is my concern, that we are seeing an incredible amount of violence coming out of these private clubs if you will all across the state. Fayetteville has experienced a tremendous amount of violence. More counties have violence. Charlotte-Mecklenburg is inundated with violence emanating out of these private clubs, where a membership is required. There are rules in place, and I know the chairman is going to address some of this and I don't want to get too much into his presentation, but I think at the regulatory level maybe holding up on the issuance of the temporary permit is going to alleviate a lot of the problems. When I first came over as ALE director one of the first policy matters that the chairman implemented at the commission was extremely helpful to us. That was a six month time period on the issuance of the temporary permit. I can tell you that if a place is a problem establishment, it's going to avail itself to law enforcement within six months. In other words, they didn't automatically receive a permanent permit which is much more difficult to revoke if there is a problem at that establishment. The chairman, by the stroke of his pen, just extended the amount of time that the temporary permit is enforced to six months, which helped us greatly. Whenever they engage in the type of activity that we all knew they were going to, then it made much easier to pull those permits. But thank you sir for that question, they are a problem and we are working with the commission to address them.

Chairman Goolsby said if there were no more questions for Commissioner Baker the committee would call former Lieutenant Gov. Jim Gardener. Chairman Goolsby then recognized the Sergeant at Arms staff present and introduced Jim Gardner, Chairman of the ABC Commission, for a presentation. (See Attachment 4 for a copy of the presentation).

Upon concluding his presentation, Chairman Gardner indicated he was available to answer questions from the committee. Chairman Goolsby recognized Sen. Allran to begin discussion following the presentation.

**Sen. Allran:** Thank you Gov. Gardner, very much. Thank you for those comments about the underage drinking. We do want to follow-up on that and look forward to that. I wanted to ask you a question about the private clubs because I just don't understand this. Aside from things





like country clubs, which are different, if we've got so many problems, it seems like some type of phenomenal problem with 'private clubs,' why do we have those? What are those for? If they're so bad, why do we have them?

**Chairman Goolsby:** If I may Sen. Allran, I asked just a minute ago attorney Brenda Carter from the Research Division to sort of give us as committee members the difference between private clubs and bars and how they operate. If she could just give us a brief legal overview we would very much appreciate that Ms. Carter. It would help you out also Gov. Gardner so you don't have to try to cover that legally.

**Brenda Carter:** The definition of a private club is an establishment that's organized and operated solely for a social, recreational, patriotic or fraternal purpose. It is not open to the general public, but only to members of the organization and their bona fide guests. Private clubs qualify for liquor by the drink, so it can be a bar without meeting the restaurant requirements that apply to other establishments. So the primary difference is that you can go to a private club as a guest of a member and get a drink, whereas you may not be able to get a drink. We don't have freestanding liquor by the drink type bars in North Carolina, so that's the primary difference. Recently, prior to the last three or four years, there used to be a waiting requirement to become a member of a private club. But the General Assembly passed a law so that basically the waiting period was eliminated. That was one of the more recent changes. It is statutory, so of course you can change the law.

**Chairman Goolsby:** And if I remember correctly there is a minimum fee of \$1 to become a member, am I correct there Ms. Carter? There's a minimum fee of \$1 in order to become a member. I think you have to pay a membership fee, but there is no waiting list anymore. Used to, the way that it was is that you had to come in, sign up, pay your little fee and then wait so many days. Or you could enter with a member. I don't know – are we restricted Ms. Carter on the number of people a member can bring in? Is there a limit on that, or can I bring in 20 people?

**Brenda Carter:** I'm not aware of what those requirements are because a good bit of the requirements are by rule of the ABC commission.

**Chairman Goolsby:** And I hear Gov. Gardner commenting that there is no limit. Would you like to speak to that as to how many can come in sir?



**Chairman Gardner:** Yes I would. If you would read the statute, the statute is designed for a country club or what we all think of as a country club. Not a bar, under any circumstances. What has happened through the years – I wasn't here so I don't know – somehow that hasn't been followed. What we have today – private clubs are bars. Nothing else but a bar. They're selling liquor. We had a situation with a club in Charlotte that spent a great deal of money. If you went in the club, you would have thought you were in Las Vegas or somewhere. That's the kind of funds that they put in it. We found out that they were having problems every single night. We got ALE on top of the situation. We pulled their permit. They came down to appeal to us on pulling the permit and the lady who was the general manager of the club, I asked her to tell me about the bylaws they're supposed to have. Tell me about your membership and your list of members. She gave me this blank stare like she didn't even know what I was talking about. I said, by the way what do you charge for a membership? She said \$1. I said what does that \$1 entitle you to? She said to come in and you can bring 20 guests. \$1 and 20 guests to go into a bar, that we call a private club. We are taking a very serious look at the commission on some of the things we can do right now under the statutes. We don't have to give anyone in the state of North Carolina a permit. When you walk into the ABC Commission and you want to get a permit, we have the statutory authority not to give a permit until we've properly checked it out. We've been giving temporary permits basically to everybody who comes in. I'm seriously thinking about, and have talked with our legal department, of going back and saying you've got a three month waiting period. It's going to give us an opportunity to go out and find out who you are. What kind of club you're talking about operating. Are you prepared to meet the rules and regulations under this permit that you're trying to acquire? I would rather do that and have somebody upset that they've got to wait then give a temporary permit, and six months later read that three people were shot and killed in this bar. Private club. So we are looking at what we can do, I think Greg Baker mentioned we are issuing temporary permits now to slow it down, so that we don't have to go through the long legal problems that we have in revoking a permit. We are aggressively revoking permits if violence is involved, underage drinking is involved, drugs are involved. We are working towards right now increasing the fines we have been charging and almost going to a three strikes and you're out. If you're caught selling to underage a third time you're going to lose your permit. I think that's the only way in this state that we're going to get a message across to people who don't want to follow the laws, that those days are over. When you get that permit, you have a responsibility. If I owned a restaurant in Rocky Mount North Carolina, which I did at one time, and I had a permit to sell alcoholic beverages, I clearly understood that permit was given to me and if I didn't follow the rules I could lose it. I hope that we're doing the kind of job in the ABC commission that everybody that comes in to get one



understands their responsibility. It's not our responsibility to go out and check IDs, it's their responsibility. So we've got a big job on our hands because of the size of the industry and how quickly it's growing. We desperately need your help, particularly in the area of law enforcement. I might, as a suggestion, and you addressed this one time in 2002. When you took the renewable fees from beer and wine and you allocated it to fund ALE. So you knew on a continuing basis exactly what it was. I think I'm correct senator in this. Somehow, it got taken out and put back in the general fund. Imagine, policing 60,000 permits and you don't even have a budget for your automobiles. I don't know how they do the job they do, and I hope you'll give a real serious look to changing it. I'll be glad to answer any questions, or try to.

**Sen. Bryant:** I just wanted to make a few comments about the private clubs. I think it is honest to say that in many instances, the private clubs are a vehicle, particularly for the younger generation, the only way you can get into a social environment and have liquor by the drink, dance and that kind of thing. It's the closest to a bar you can get in North Carolina since we don't have bars, so I think that is an honest assessment. I do think that it is important that we look at a way we can provide that kind of social environment for folks in addition to the country club strata of residence. I mean, there needs to be a way for an average citizen, or a group who organized themselves to have access to this kind of social outlet. Otherwise we're going to create other kinds of problems outside the legal environment, where people will go and have that kind of entertainment. I don't think we want to go back to that point. And I do think we need to fairly enforce whatever the rules are, and to make sure that violence, drugs, all those things are prohibited. Look at, from a state level and a local level, enforcing the rules to make that happen. But I just wanted to say, Sen. Allran was saying why do we have them, I mean it is the only way you can go out, have a drink with friends etc. if you don't want a regular restaurant environment, which is the other requirement. Or that you don't go to a hotel. I think hotels can have bars, if I'm not correct. Those are the only other ways. And if you can't afford a country club, these private clubs are the only way sort of average citizens can enjoy that kind of environment. So that's sort of why you have them. And yes, clubs that cater to the younger age, sometimes they may, I'm not trying to make a generational, I don't want to sound anti-youth, because I'm trying to speak for you. I think young people who are of drinking age do need safe places to go to have social interaction. So we need to figure out how we provide that and there's a business component to that. At the same time, we have to create a safe environment and enforce the rules to make that happen. I think looking at the requirements we have are a start, before we start adding on to anything is my suggestion.



**Chairman Gardner:** Senator I think that's a great suggestion. We were talking several days ago at ABC Commission, that we plan to look at a number of these statutes that we think need to be looked at again, and that's one of the primary ones. It's not fair to tell someone you're going to get a permit, you've got to have bylaws, rules and regulations, and then not enforce it. Then all of a sudden here we come with a new administration and we're enforcing it. So we want to straighten it out.

**Sen. Bryant:** Mr. Chair, one follow-up? In addition to the social, your general clubs and social organizations etc., in the African-American community we have a long tradition of the dance clubs. But you also have veterans groups and service organizations that rely on these permits as well and provide opportunities in our communities.

**Chairman Gardner:** I will say that's absolutely true. We rarely have a problem with veteran's clubs and associations like that. Our problems, to be plain spoken, are with bars. They're out there, we find them for example underage drinking and we fine them \$1500. They basically laugh at us – they make that in five minutes at the gate. That's where the shootings, stabbings and violence is coming in. That's why we so desperately need a strong ALE in this state, backed up by local ABC enforcement, yes that's important. But you need a statewide agency in my opinion. I've learned a lot in 10 months.

**Chairman Goolsby:** Thank you Governor. Can you tell us what the letter you all recently sent out to the private clubs – what did it detail out for them?

**Chairman Gardner:** I don't think I brought a copy of that with me. It basically reminded them of what the law in the state of North Carolina is concerning a private club. It said that you have to have bylaws, that you have to have membership, and that we were going to start checking these establishments to be sure that they were following the law. I was on the phone today with a newspaper editor in your hometown senator, Wilmington, who had talked to a bar owner down there who said I don't understand why they're asking us for these rules and regulations. He said we're losing customers because of it. We're asking them because that's the law. That's what this fella agreed to when he got a permit to have a private club in our state. So that was to put all, I think there was 1200-1500 letters we sent out to every private club permit holder in the state, to say you're going to start following the rules, we're not going to change the rules, and we're going to start checking.

**Rep. G. Graham –** Thank you Mr. Chair. I was thinking that we can enforce at the local level, more and city and county ordinances, which could be of some help. On the other hand I'm



thinking that we would need some type of revenue sharing to have a statewide program. You mentioned Mecklenburg and Wake, maybe Forsyth, they would have revenue generated from the receipts that would allow them to pool that money back into some type of enforcement program. But most of our counties throughout the state are small and rural, and would not generate those kinds of receipts to bring on additional personnel for that enforcement.

**Chairman Gardner:** That's very true. Of the \$7 million and 167 boards, \$5 million of that is just in Mecklenburg and Wake. The other \$2 million is spread out among all the other boards. Some of them do a good job, many of them do not. They don't have the money to do it, they don't have the manpower. They just simply don't have the commitment to do it quite frankly. That's why I think, I would hope the legislature would give serious consideration to looking what you did in 2002, when you found a source being renewal beer or wine licenses that you could use to go at the problem. And I have Mike Herring, our chief administrator at the ABC Commission, Mike I think that would total about \$15 million this year? \$12 million, excuse me. \$12 million this year. That would more than adequately fund ALE statewide. Not as they are today, but it would give them the resources to do the job that's now needed with this growing industry we have in the state. The legislature did that one time and for some reason it was changed. I would hope you would go back and take a serious look at it. That's a source of revenue. That's a source that's creating some of the problem. What better way to do it than to take a source of the problem and come up with a solution?

**Rep. McNeill:** Thank you, Lt. Governor I appreciate your presentation. I just want to point out to the committee that there's a whole other group of establishments like this that we haven't even talked about today, and that's just the plain old illegal establishments. And we all know you have permitted private clubs and permitted others, but there are a lot of establishments out there that are just plain illegal. Whether it be in an old building, or somebody's house or whatever. They turn it into a bar and people just come in there and they sell alcohol illegally. Statewide there are thousands of those, that ALE has to deal with in addition to the permitted establishments that you've got. And whenever you're looking for this situation, if you're too tough on the private clubs, then I think you're going to see an increase in the illegal establishments. One thing for sure, people are going to have somewhere to go. And they're going to go wherever they can go. Whether it's to a private club with the right rules and regulations or whether it's just an illegal establishment. So, maybe we need to increase the penalties when we're looking at this, for those people that would open just a plain old illegal club



without going through the permitting process. Maybe in conjunction with the other things that you're looking at.

**Chairman Gardner:** Good suggestion, and I'm sure Greg Baker will tell you that they spend a fairly large amount of time dealing with liquor houses and other establishments who have no permits at all. I think that's a good suggestion.

**Sen. Bingham:** Thank you Mr. Chairman. Commissioner I'm certainly pleased to hear you speak of three strikes and you're out. I certainly am pleased to hear that, because it seems to be almost a kind of wild west. I know you had mentioned, I think you had mentioned 8,000 permits you expect in the upcoming year. Do you have any idea how many of those would be private clubs? It seems that's where the biggest problem arises, or at least I hear you saying that.

**Chairman Gardner:** Of the 60,000 permits we have right now, and you have to understand a single establishment could have three different permits, they could have liquor by the drink, beer and wine. I think we have 1200 some private clubs licensed right now in the state, so that would give you an idea. Basically 18,000 locations have permits right now, and they have 60,000 permits, because many of them carry three permits.

**Sen. Bingham:** If I may, Mr. Chair. It's pleasing to hear you involved in this and you have such an interest. One other question I might have would be, it seems that location, I know some of the ones in my area, location seems to play a big part of. In fact, are you looking at maybe putting stronger restrictions on some of the locations and background checks on some of these people that are applying etc.? Maybe you already do that, I don't know what the qualifications are.

**Chairman Gardner:** We are not at the present time. I think Commissioner Baker pointed out answering Rep. Boles that we are now doing what we call preliminary investigation. Civilian work. Where we go out, we measure the location, we look at it, we have told our people, we currently have 9 people, each of them in an ALE office in the state, who go in and do the preliminary work. If they see a problem, if something doesn't look right, then we have told them you go back and get an ALE agent and go back to this establishment and check out whatever you're concerned about. Right now, what we do is we look at the location, we do the measurements, we make sure that we turn it over to ALE and they do the fingerprinting and all of the other work that has to be done. Our purpose for doing that was, with the limited resources they had, the last thing we wanted them doing was civilian work. They're law enforcement, and we felt we could take off whatever that percent was and have our people do that. So far it has worked very well.



**Rep. Dobson:** Thank you Mr. Chairman, thank you Governor. I think you may have answered my question, but just to be clear, you said in passing that there are 60,000 licenses but 18,000 establishments.

**Chairman Gardner:** 18,000 retail establishments, about 28,000 total establishments.

**Rep. Dobson:** Thank you, that was my question.

**Rep. Faircloth:** Thank you Mr. Chairman. Governor it's good to have your presentation, I appreciate it. We've seen an evolution in this state in the way we handle alcohol distribution over the years. And if you go back far enough, you find some of the drink houses and the illegal ways of distributing alcohol that were in place when we didn't allow that kind of thing legally in our state. We had clubs that were reputable clubs, fraternal or veterans or whatever, but they were sort of pushed into illegal alcohol sales because members wanted to have what big states have. When you went to Vegas or whatever. So we slowly allowed that to happen. I think the pendulum just swung too far. These so-called clubs now are not what we had envisioned when those laws were passed I think. There's nothing wrong with requiring a membership. Country clubs do that. There's nothing wrong with making it a reasonable fee to become a member. Country clubs do that. There's nothing wrong with saying there's a waiting period. There's nothing wrong with limiting the number of guests that can come in, that probably should be done by the club itself. We've gone far past that, the pendulum just swung too far, and I think we've got to find a way to bring it back to a more balanced place but yet still allow our people to be social, to have places to go, and not get into class warfare where we make it so expensive that only the rich can do that. We don't want that. We want a system that's fair to all. I'm glad to hear that you're doing this. I hope we can participate with you and find a way to solve some of these problems.

**Chairman Gardner:** Well, we can't do it without you. You're the critical part of this whole thing and you're absolutely right we do need to go back and look at where we stand right now. We can't talk about 10 years ago, when the law was written 15 years ago. We think we have to deal with where we are now. And we are involved in a huge, growing industry in this state that's putting a lot of revenue into the state of North Carolina, but it's creating a lot of problems and I think we've got to stand up and deal with these problems. I know Rep. Burr just saw one night, imagine this is what these people go through every night, seven days a week. They're out there protecting us. When I'm at home asleep at night in Rocky Mount, North Carolina, they're out working somewhere. They don't go in these places at 10-12 in the afternoon. They're in there 1,



2 and 3 at night. I can almost say 100% that every single accident I've seen involving a 21-year-old, any of the violence that goes on, always goes on from 2:00 am on. I used to tell my children, I'm sure each of you have heard it from your parents. Nothing good happens after 12:00. Amen, that's true. And it's going on right now. I think you're absolutely right.

**Chairman Goolsby:** I would like to remind the members – if you want to look at the rules concerning retail permits. That's N.C. G.S. 18B-2008. And it does say, as the governor was saying, 'The Commission is authorized to use broad discretion in further defining the kinds of places eligible for permits under this article.' And it goes on saying 'The rules may state the kind and amount of food can be sold in each category, relationship of food sales to other receipts, size of the establishment required for each category, kinds of facilities needed to qualify, kinds of activities for which an alcohol beverage may be sold,' it goes on. It also says 'Rules concerning private clubs may also include requirements clubs have a membership committee,' all those things you were talking about. Define the times that it's open. How many people can be brought in, all these types of things. So we've granted the commission a great deal of discretion establishing these rules and we appreciate your commitment, governor, to the law of this state to see to it that these clubs are places where people, as Sen. Bryant was concerned, can go and relax and enjoy themselves, but not dens of crime and inequity. Thank you so much, it's good to have you with us sir.

**Sen. Bryant:** In our community too there are opportunities to require certain off-duty law enforcement officers etc., but how does that come into play? Is that something that ALE requires or is that something the local police department requires in order for a permit to be issued? Like how much security must be present? That was one question, my second question is do you have a sense what percentage of actual alcohol sales in the state is attributed to the private club category? That was just another question, but first the law enforcement and security issue.

**Chairman Gardner:** Each local ABC board has a responsibility to spend 4% of their net proceeds from the sale of alcohol in Nash County. They can contract with ALE which we strongly recommend, or they can decide in the big areas like Mecklenburg and Wake, who have their own local law enforcement and they do a terrific job. ALE will tell you right off the bat, Mecklenburg and Wake do a great job. If you get down into the smaller areas like our home area of Nash County, they don't have the resources to go out and put boots on the ground. They either contract with ALE or they contract with the local police department or local sheriff's department. I think in the case of Nash County they're contracting with the Rocky Mount Police Department. The problem there is not that the Rocky Mount Police Department doesn't do a





great job in law enforcement, alcohol is such a small part of what they face every day they're not familiar with the complex ABC laws in the state like ALE is. So that's why we so strongly recommend we properly fund ALE, they can work very closely with the big boards, but they can fill that void that Nash County and other areas like that simply don't have.

Chairman Goolsby thanked Commissioner Gardner for his remarks and said the committee would take up the last item on the agenda next. He said this was a short item about the use of technology in the court system that should be saving the state a fair bit of money in the future. He said it helps move cases along faster in the court system. Jennifer Harjo, the chief public defender in New Hanover County, and Slade Trabucco, the president of JurisLink, Inc., gave a presentation on inmate/attorney teleconferencing. (See Attachment 5 for a copy of the presentation).

After the presentation, Sen. Goolsby recognized Sen. Bryant to begin committee discussion.

**Sen. Bryant:** Maybe I missed it, but how is this funded? Who provides it?

**Chairman Goolsby:** I think right now, Jennifer you can correct me if I'm wrong but doesn't your office fund it out of your own budget? We don't have any state money that's going to this.

**Ms. Harjo:** It's been a pilot project, so quite frankly Slade, his company has funded the installation of the equipment and the equipment from the jail standpoint, and our office, indigent defense services, has paid a minimal amount right now as part of the pilot project. Quite frankly I guess we were kind of the guinea pigs on it to see how it would work and if it would work and to aid JurisLink and Slade to see what kind of factors worked for us and what factors did not work for us.

**Sen. Bryant:** I notice in the slide that there are these other facilities that have JurisLink – New Hanover, Brunswick, Edgecombe, Pamlico – are they all through this pilot program and funded by the developer of the technology, or what is the funding?

**Mr. Trabucco:** They are not part of the pilot. We have three year contracts with most of those facilities, and we're also looking to expand into Edgecombe and Pitt and a lot of other locations. Those are funded by us. The primary purpose of this to start was for federal criminal defense that are housed around the state, so the savings on average per trip for a federal attorney was \$500. But the jails, there is no cost to the jails. It would be funded when we provide the service.



The jails don't have a cost, they don't touch the equipment. We provide all of the equipment, maintain it, are notified if it goes down.

**Sen. Bryant:** And your contract is with the federal court system?

**Mr. Trabucco:** No, currently we have contracts individually with each of those jails. But also, I have a contract with United States Probation, we have a pilot project with the federal public defender for the eastern district. Then Chief Judge Debber, the federal judge in Raleigh that oversees the panel, he has approved JurisLink as a reimbursable expense and said to the attorneys this is what's reasonable as part of your fee. They are cutting our fees because, as opposed to spending \$800 for a trip from Wilmington to Edgecombe, it's now \$55.

**Chairman Goolsby:** And I think what you're seeing Sen. Bryant, correct me if I'm wrong Slade, but I think I read between the lines here. You're finding sheriffs that are also helping to fund this because it saves them the time, money and personnel to let these lawyers in and out and go through all the hassle?

**Mr. Trabucco:** Yes, New Hanover County really enjoys it. They get notified of the meetings, they're scheduled the day before. They get a notice, they know who's coming in. They don't have us coming in and the front desk having to wad us down and check all of our stuff like Jennifer said. They've been very supportive and we're actually about to expand out in New Hanover.

**Rep. McNeill:** Continuing on that, I guess at some point then you're going to want I guess us to allow you to reimburse local attorneys for this technology, putting it on their devices? Is that where you're heading with this?

**Chairman Goolsby:** Sir I only asked this be put on the calendar because I was fascinated by the technology and wanted you all to know what was going on. As you know we currently have video first appearances that we do in our state. We do it in New Hanover County, it saves us all that transport time from the jail. This was just an emerging technology. A video first appearance involves the state itself. When we have defense counsel and the separateness of this from a state-run facility is a little different. As Jennifer pointed out, to make sure that the inmates, the defendants are comfortable with the technology that they're not being listened to. As they are on the phones in the jail, much to the chagrin of defense attorneys like me quite often when they don't pay attention to that and say bad things. This is an attorney-client privileged conversation, so it just looks like another use of technology that in the future I hope will offer



significant cost savings to the state as we move ahead. I was fascinated hearing about it, I asked these two guys on their own nickel and I appreciate them presenting it. Are there other questions from committee members?

Hearing no further questions from committee members, Chairman Goolsby thanked the presenters and said the committee would move to item two on the agenda regarding motor fleet management. Sen. Goolsby introduced Mark Bondo from the Fiscal Research Division to give an overview of motor fleet management. (See Attachment 6 for a copy of the presentation).

After the presentation, Chairman Goolsby recognized Sen. Newton to begin discussion.

**Sen. Newton:** Mr. Bondo, I appreciate it. You didn't touch on this directly but I wanted to ask you about it. Is there a program whereby state employees who don't qualify for a state vehicle can still acquire a vehicle for some kind of fee they would pay to drive back and forth to work?

**Mr. Bondo:** Well I think if the state employee does use a vehicle for commuting, personal usage of a vehicle is not allowed. There is a program that if a state employee needs to commute from their home to their workplace they can use it under specific circumstances. And that report is generated quarterly to the General Assembly every year, for those that are exempt, and I can get that to you.

**Sen. Newton:** Can you tell me, what do you all call that? What's your parlance for that so we know what to ask for and ask about?

**Mr. Bondo:** I usually call it use of state vehicles for commuting purposes, but I can get you the report. I think the Department of Administration might be able to answer the more specifics of it a little better than I can.

**Chairman Goolsby:** We will direct staff to make sure they get that report and email it to all members of the committee.

**Sen. Newton:** Mr. Bondo, if you're able today, could you tell us what the costs are as far as the state employee? What do they pay for, and if so where does that money go?

**Mr. Bondo:** I will see what that cost is, but I don't have enough information right now to give you an answer.



**Chairman Goolsby:** We will make sure to have that to you before our December meeting, senator.

Hearing no further questions, Chairman Goolsby noted that Secretary Perry would not address the committee and that Drew Harbinson, Director of Purchasing and Logistics at the Department of Public Safety, would present next. (See Attachment 7 for a copy of the presentation).

After the presentation, Chairman Goolsby recognized Rep. Faircloth to begin the committee discussion.

**Rep. Faircloth:** Thank you Mr. Chairman. Thank you for your presentation. Is there any history that you know of in the state of a leased fleet?

**Mr. Harbinson:** Not in the sense that we would go to the private sector for that. You could probably do that with a true motor pool passenger vehicle. That is a model you could use. But for law enforcement vehicles it doesn't work well because typically the vehicles, when they reach that replacement schedule, are not the kind of vehicle that are going to bring a lot of resale value back to a company. We're putting cages in them, we're taking cages out. We've put gun boxes in them, radio, computer equipment in. When you take those out, obviously there's damage to the resale value as that happens. Typically law enforcement are not leased.

**Rep. Faircloth:** The reason I ask is that with more and more retail manufacturers now, they're selling a car with a service plan up to 60,000 miles or whatever. I'm wondering, and also the phenomenon we see of police cars being the favorite of cab companies. They love to get them because they're so tough, even though they may be sort of ragged. I'm just wondering if there might not be some possibility of looking at whether or not a leased-with-service might be beneficial as opposed to a purchase and paying people to service it ourselves.

**Mr. Harbinson:** Well, most of the motor fleet cars now are serviced privately. They're not done in garages that DOA owns, but I'll let them speak to that. They have contracts with local companies to do preventive maintenance work on it and repair work on it. So that part of it is already being done I think. The fact whether you could lease the entire car with that kind of plan, I think the cost is probably going to be prohibitive if you try to do that with the types of vehicles a probation or parole officer would need. That doesn't mean you couldn't try that. Certainly you could look at a pilot for that.



**Chairman Goolsby:** We are going to go to Rep. Hurley and then Rep. McNeill but I do have a question in the meantime. I see down here your resolution that there is an immediate need to purchase 858 vehicles just to provide each officer with a vehicle. How many of those are law enforcement vehicles and how many are passenger vehicles?

**Mr. Harbinson:** All of the vehicles I'm referring to in that number are numbers that would relate to the probation, parole and court services side of the house. Those aren't law enforcement vehicles as currently defined.

**Chairman Goolsby:** So no cages, no ammo boxes, none of that.

**Mr. Harbinson:** No, these do have cages, some of them. These will have ammo boxes. These will have computer equipment with radios. We up-fit those cars provided by DOA, and right now we're spending somewhere around \$1700 per car that gets us a complete security package and about \$1200 per car that gets a partial package.

**Chairman Goolsby:** So is this a partial package or is this a full law enforcement package? I'm not following.

**Kristine Leggett:** To clarify, part of the reason you're here today and listening to this issue is that these cars are classified as passenger vehicles. That's what makes them under DOA, that's why DOA has control of these cars. What DPS is saying is maybe these shouldn't be passenger vehicles because they are used for a law enforcement purpose for the probation and parole cars. But they are classified as passenger vehicles.

**Chairman Goolsby:** Ok, thank you and I do have a follow-up question here. In your second resolution, you talked about requiring a new model of fleet management. Is this something that you guys are working on?

**Mr. Harbinson:** We've had discussions with DOA as recently as yesterday. We'll continue to discuss the various options of how best to model fleet management.

**Rep. Hurley:** Thank you Mr. Chair. I was just wondering, part of this 175 we gave money and evidently there was a misunderstanding. They did the lease money instead of the purchase money, correct? And another question. In Randolph County two of our probation cars have been supposedly sent in to be fixed and I think to Raleigh. They haven't come back for two months, it's been two or three months it's been involved. They're having, thank goodness they



have a couple of people out because they can use their cars. But does this happen often, and what can we do about that?

**Mr. Harbinson:** Representative it's happening more often, I would say that. It creates a situation where we're sharing cars with probation officers and that's not optimal for obvious reasons. If one is called out, it's difficult to backfill when someone else needs the car. Yes it creates problems and disruptions in the program.

**Rep. McNeill:** Thank you Mr. Chair. I appreciate your presentation. I was trying to get a little clarification here. In your presentation you're saying that you all have cars from National Guard, juvenile justice, emergency management, community corrections, prisons, administrative operations and so on and so forth. But these 858 vehicles that you're talking about, is that spread over all these agencies?

**Mr. Harbinson:** It's primarily between the juvenile justice and community corrections. Those are the court services people for juvenile, and the probation and parole for corrections. So primarily it's over those. Very few of them would be emergency management or National Guard.

**Rep. McNeill:** So this just addresses the needs of the court services and it doesn't address the needs of any of the other divisions that you have here.

**Mr. Harbinson:** No it does not.

**Rep. McNeill:** A final question. I know nobody likes a vehicle that has been passed down or passed on. Do you all take a typical law enforcement vehicle that is built better, and maybe after it can't be used on the road pass it down to someone else? Maybe it's still got some service life but maybe could be used in a less than law enforcement situation?

**Mr. Harbinson:** Well, to give you kind of a picture of where we've come and where we're headed, DPS as you know consolidated really officially about a year and a half ago when our budget codes all became one. We became an entity of itself. From that point forth we've begun to look at how best to move forward with the fleets we do own. How do we consolidate that? How do we move forward with that effort? And as we've gone through that process, we came to the committee and one of the first things we needed was a fleet management system. We came to you guys, you supported us in that by funding the purchase, or not the purchase, but us being able to utilize an existing system that DOT has and put it into DPS. The reason all this



plays together is we've taken this one step at a time, to get in a very methodical way a fleet management program established. We've now got the funding for the fleet management system, we've got a project that is about to begin to stand that system up. As we do that, we're meeting with the stakeholders within the department to discuss. We've written a strategic plan, and that plan looks at it over the next five years really. What we will do is look at things like how do we reallocate resources? Do we sell every law enforcement car because it has completed its useful life in one area of the department, can it be used for others? There's also an ability there to, by way of example, in our probation and parole offices, there are some officers who will never meet that minimum that motor fleet placed. The reason for that is they're in Greensboro or they're in Charlotte, and so their entire caseload may be within a 10 square mile area. So they're using the car every day, they're going to locations every day, but they'll never meet the minimum mileage for that kind of requirement. So what does that do once we consolidate? It may provide us the ability to take one that's in Greensboro and shift it to a Madison County or a Cherokee County where one is driving 30 to 40 minutes to get to one appointment. That's putting a lot of miles on. So there are lots of opportunities to better utilize the resources. But to tell you that every car would be a candidate for that would not be true.

**Chairman Goolsby:** Mr. Harbinson, can you tell us how long it will be before the system is up and running?

**Mr. Harbinson:** We've targeted 18 months. Our project person is here if you'd like more detail on that.

**Chairman Goolsby:** Yes, please come forward, identify yourself and explain how long it's going to be until this system is up and running. And the reason for an 18 month delay?

**Mark Tyler:** Mr. Chairman, my name is Mark Tyler I work with the Department of Public Safety and will serve as kind of a project manager for the ERP implementation. We are just now in what I would consider the initiation phase of the project, in that we're getting the appropriate state-level approvals for this system. What we'll then do is our current plan has us beginning our planning and design sessions in February of next year, with plans to go live current schedule, assuming we don't run into any roadblocks, has an implementation of April or May of 2015. That gives us adequate time to do planning and design. Any system configuration or design changes that are necessary to support the business rules and processes for an agency, for DPS, and DOA interestingly enough is going to be a partner in this implementation, to allow us to configure the system to support those unique business rules. It will allow us time to convert our



data, do our system testing, train the employees across the state that will utilize this system and go live such that we have a successful implementation.

**Chairman Goolsby:** And what about the Highway Patrol?

**Mr. Tyler:** Highway Patrol was currently using that system, today, as part of the previous DOT implementation. The piece that's not there today is the financial integration of the financial data to support that.

**Chairman Goolsby:** So you all will be adopting the current system they use?

**Mr. Tyler:** Yes sir, we will be adopting the DOT system, and when the DOT system went live in 2003, both the Department of Public Instruction and the state Highway Patrol were also users of the fleet management solution.

**Chairman Goolsby:** Thank you Mr. Tyler. We'll go ahead and move on to further questions. I believe Rep. Stevens was patiently waiting.

**Rep. Stevens:** Thank you Mr. Chair. My question is, when you find this sweet spot for reselling the vehicles as opposed to running them an extra 50,000 miles until they fall apart, what's the difference in what you would get for the vehicle at that sweet spot versus at the end.

**Mr. Harbinson:** Well it can be significant. I can give you the experience I had at DOT. When 12 years ago I took that fleet over, it was 65% depreciated out. For all practical purposes, 65% of the fleet was inefficient and unproductive. And very costly. We've made some of those model changes. I started a different fleet management model. Within 5 years we had increased the value of a pickup truck, take a pickup truck, from about \$800 to \$1200 per vehicle on average and within the 5 years by replacing them on a more adequate replacement program. I won't tell you it was optimum. But it was more adequate. We were able to almost double that return on those pickups.

**Rep. Stevens:** So to follow-up, what you're telling me is it's a difference of \$800-\$1200 additional value by getting rid of them at 100,000 or so as opposed to 150,000.

**Mr. Harbinson:** At that optimum disposal. I don't want to mislead you that 125,000 miles is where you dispose of a piece of equipment. Or 100,000 for that matter. It is based on a formula that gives you the data that tells you where that optimum point is. It may translate into miles. You can then turn around and say, for this class code of equipment, or pickup trucks by way of





example, that you ought to get rid of it at 125,000. But it's based on a formula that tells you what that optimum point is. It takes in the cost of repair, the cost of maintenance, the cost of fuel. Cost of acquisition. Then apply that against what you do get as a return on the salvage value side. And you can identify exactly when that piece of equipment should eliminate of the fleet. You should dispose of it.

**Rep. Stevens:** You're saying you take into account not just the mileage but the service, so all of these cars are having some kind of repair before 125,000 miles that's causing them to fall into that category of needing to get rid of them?

**Mr. Harbinson:** I can't really answer that because I don't have access to the cost data for DOA vehicles. DOA can certainly answer that question.

**Rep. Jordan:** Thank you Mr. Chairman. Thank you Mr. Harbinson for your presentation. Over here to your left. Directing your attention to the current status of the rented fleet, that chart on the first page. Is there an underlying structure, or are there underlying variables or characteristics creating the variance that we see in the percentage of vehicles over 100,000 by operation?

**Mr. Harbinson:** I wish I could tell you I knew the answer to that. I can't really. There is a way to do that when you have a good fleet management system in place. Because you can then collect the data that will tell you exactly that, you can begin to do analytics on the class codes of equipment. Without that system, it's next to impossible. I can tell you intuitively that I believe the type of use of the vehicle definitely correlates to how long you ought to keep it. By way of example, in the DOT fleet we had pickups that were used day-in day-out on projects. So they were in and out of very rough terrain. Not driving as a traffic service truck would have been on the highway. And so a traffic service truck might last 50,000 miles longer than one that's assigned for the purpose of project work. So intuitively I can tell you that yes, the use of the vehicle whether it's the National Guard versus patrol or patrol versus emergency management. The use of the vehicle is an extremely important factor that you have to plug into the formula to look at when you should replace it.

**Rep. Jordan:** My second question is on the second page. How do you determine that the 228 vehicles that you mentioned here are not safe to operate? And if this determination is as serious as a reasonable person would interpret, why are these vehicles still in service if they are in fact still in service?



**Mr. Harbinson:** Well I can give you a range of examples. Some of these, we've done a recent survey with the guys in the field, and ladies, who are officers. They tell us that on these 228 vehicles, things like transmission slipping is occurring. The car will still move but it won't shift right. Some of those are in mountainous areas, and Mr. Guice, Commissioner Guice will speak to a lot of those issues. So I'll let him answer that.

**Rep. Burr:** Thank you Mr. Chairman. Just want to make sure I wrap my head around this, if you'll help me. Just looking at your sheet here that you passed out, you're saying in the last 5 years you've had 624 new vehicles that have been put in the fleet through DOA. And you've given them \$84 million in the last five years.

**Mr. Harbinson:** Approximately, yes.

**Rep. Burr:** You're saying if you were purchasing these vehicles or putting the equipment in that it would be about \$23,000 per vehicle roughly? Which is a little over \$14 million. So, the other \$70 million that you've given DOA. I mean I understand there's some costs there, but can you tell me what are they using the other \$70 million for?

**Mr. Harbinson:** They would be using it for the preventative maintenance and repair of the rest of the fleet that we're using.

**Rep. Burr:** Are they using the entire \$70 million for the DPS fleet?

**Mr. Harbinson:** Representative I really can't answer that. You would have to ask DOA how they're breaking that down.

**Rep. Burr:** Perhaps when Commissioner Guice comes up he can tell us if he thinks he's getting his money's worth out DOA.

**Chairman Goolsby:** Thank you, you can follow-up on that question with Commissioner Guice.

Hearing no more questions for Mr. Harbinson, Chairman Goolsby said the committee would next hear a presentation from former Representative and now Commissioner of Adult Corrections and Juvenile Justice, Department of Public Safety David Guice. (See Attachment 8 for a copy of the presentation).

Commissioner Guice finished his presentation and said he would be glad to take questions. Chairman Goolsby asked the first question to begin committee discussion.



**Chairman Goolsby:** I have one question, Commissioner Guice. Could you tell us about, what kind of percentage do you have of your probation offices that are actually making arrests? I guess that would only be the officers who are handling both the intensive and the supervised. Any idea how often those occur? Or do they call in local law enforcement? As I understand it, they are the ones who are charging with actually arresting a violator.

**Commissioner Guice:** Thank you Mr. Chairman. We have in the neighborhood of 2700 staff. Let me make sure I give you the right number. Certified staff that actually are certified to make an arrest are about 2,075. We also have 417 juvenile court counselors. They do not make an arrest. There is different terminology for what they actually do and how they perfect getting someone into custody or address an issue. But over 2,075 certified officers in the state. In addition to that, that does include the chief PPOs. The certified positions that we have are our chief PPOs and our probation and parole officers. As to the question of making arrests, we serve our own warrants and we, I would say 95% of the time make our own arrests. We do encourage the engagement and involvement of law enforcement, but to be very candid with you, unless we know we're going to be arresting a specific person, most of the time those things occur and they occur rather quickly. So we engage. And we've been, we actually made those arrests years ago when we didn't have equipment. How we did that, we learned how to talk a lot. They'd kind of get through, I guess, that's why I am the way I am. I talk a lot. That's what I learned early on. We pretty much handle the arrest ourselves.

**Rep. Hurley:** Thank you, Mr. Chair. Sort of just a comment. We appropriated, supposedly, funding for 175 new probation officers. So, according to what I have then, they did it according to the lease thing, which is around 5800 if I've got that right in my mind. But they right now would have enough for 46 new vehicles. So I don't know where that money is right now. But I'm hoping that would be used and I don't know what the hold-up is for right now.

**Chairman Goolsby:** Can you answer that Commissioner Guice?

**Commissioner Guice:** Yes sir, I can. Madam Chair, what actually, in figuring the dollar figure when the budget process was being worked through, what actually occurred was, what was funded for those 175 was actually for that lease amount. It was not the amount, so the legislature did not appropriate the funds to purchase the vehicles. So, it would take about \$23,000 per vehicle to purchase those vehicles. And those dollars were not funded. So it's something that we want to talk with you folks about, because it's something that we need to have appropriated.



So nobody is holding anything, it's just monies were not provided for the funding to purchase those vehicles. If I'm wrong, I know Ms. Leggett can respond.

**Rep. Hurley:** Well, OK. Our budget should be out of order I guess. Not in balance. We didn't appropriate if we signed the thing. We have enough for 46, even if you did figure it just on the lease, 46 new ones according to what I figured or right around that. Can Kristine add anything?

**Chairman Goolsby:** Yes, can our staff help us at all in answering this question?

**Ms. Leggett:** Thank you Mr. Chair. Rep. Hurley, I think. So what was appropriated per position was about \$5,034 per position. And that would need to be paid to DOA if those cars actually existed. But because you didn't appropriate the money to buy the car in the first place, all you've got is an appropriation to go to DOA for a car that DOA doesn't have. So, a number of things could happen here. In the short session, you all could appropriate the money that is necessary to purchase the new cars for the 175 positions, which I think would be about \$4.5 million. DOA has \$36 million in a fund. They could use some of that money to buy the cars. There are a number of different things that could happen. The \$5,000 that has been appropriated for the lease, I don't think could be used. It may be able to be used to purchase new cars, and I think that's what you calculated. That would give them 46 new. But that's not – that's a drop in the bucket. They've got 175 new people who need a car.

**Chairman Goolsby:** Follow-up, Rep. Hurley?

**Rep. Hurley:** One more time. You haven't hired all of these 175 yet, have you?

**Commissioner Guice:** That's correct. I believe the 75 will come on this year and the additional 100 will come on the following year.

**Rep. Hurley:** Thank you.

**Rep. Burr:** Thank you, Mr. Chairman. I think this is quickly becoming a House committee it looks like with the attendance here. But happy to see all the House members here

**Chairman Goolsby:** You've got Sen. Daniel and I batting clean-up here.

**Rep. Burr:** Good, wonderful. Commissioner Guice, I know you mentioned you're in discussions with DOA trying to work this out. Certainly this is something important that they should be moving fairly quickly on and trying to work out. But I'm curious, in your discussions,



what is their response? Why are they not replacing your vehicles as they take them from you? Obviously they have funds available. Why are they not giving you the vehicles that you need for your employees?

**Chairman Goolsby:** We do have DOA on the agenda here in a minute. We'll be happy to hear from them - if Commissioner Guice has an answer on that one he's welcome to try.

**Commissioner Guice:** Thank you, I'll try. I believe our discussions in the last day or so was, at that point, we had I think good discussions. It was pointed out to us that there was a true desire on their part to correct the problem and address the issue. As far as specifics on how they would address it, I think there was some questions about how we should move forward. And some of those questions I think have to be addressed at a little higher level. But we've agreed to continue to have those discussions. I think they truly understand, after spending a little time with me, about our needs. They've probably heard more than they've wanted to hear. But I think I was pretty passionate about the fact that we have a need, and quite frankly, to me, I mean I'm about at the point I guess the way I address the need is, if I were in a metropolitan area, I maybe out to give vouchers to my employees to ride a bus so they could go out and make their contacts. I mean, 630 officers who do not have a vehicle to do their job. I just ask you to go home and talk to the people, your officers in your community. I think that would be an eye-opener for you. I believe that DOA has heard our concern. How we get to where we need to be, I think is something we've got to continue to address.

**Rep. Jordan:** Welcome Commissioner Guice, thank you for being here with us. Let me ask the two questions that I directed to Mr. Harbinson earlier. The first one I'll be more specific. On that chart, do you have that same memo that we have sir?

**Commissioner Guice:** I believe I do.

**Rep. Jordan:** Ok. On that chart, it gives us a list of operations about the percentage of vehicles that are over 100,000 miles. And what I've noticed here is, we have emergency management 66% over 100,000. Community corrections is half that, percentage wise. Prisons, 56%, administrative operations 24%. Just because I'm an attorney don't assume that I already know the answer because I don't. I have speculation, and it involves what Mr. Harbinson talked about, different uses for the vehicles. Is there also some difference because of departments that are now combined? They might have had different policies? What could cause the differences, the variances that we see here?



**Commissioner Guice:** Well, I think one would have to take a close look at the fleet and see when those vehicles were assigned and the policies in place as it relates to transportation. I can give you an example. When I went to look at some of the old DOC prison vehicles and I talked with Mr. Solomon about that situation and the fact that we seem to have a few vehicles sitting around that are there a while, when we got looking at the mileage, the mileage on those vehicles was extremely high. But they have to, they don't just go out to make home contacts. They are transporting people long distances at times. And those cage cars where they are transporting those people, they're putting quite a few miles on those vehicles, where we might have a vehicle in the field on the community corrections side that has 116 or 140,000 miles. I'm told that we possibly have a vehicle on the prisons side that has over 200,000 miles. So the question is, if you know you've got a vehicle that has those kinds of miles on it, and you know you've got to drive a distance to pick someone up, are you going to take that vehicle or are you going to take another vehicle? And I think we have seen some of that on the prison side. On the juvenile side, I think that the closure of the YDCs and some of the changes that we've made in the last number of years now cause us to drive a great deal more. Even the detention facilities for example in the western part of the state, it's two and a half hours from Cherokee County to Asheville, but we have to drive all the way I believe down to, I think it's Caldwell County or on down, before there's a detention center because we closed the one in Buncombe County. Well, the officer doesn't just take the young man or young lady to the detention facility and just leave them. Because they've got to pick them up for court. They've got to transport them back and forth etc. So we're constantly making those kinds of miles and drives. You just have to study that issue. We do not have access to the DOA information or the information that they have on each of those vehicles. Most of what we have gotten, naturally we keep up with the mileage logs and things of that nature, but most of what we have gotten is from our staff as it relates to the service of vehicles etc. I don't know if I answered, but there's just a different flavor in the work we have taken juvenile justice and corrections, and within corrections community corrections and prisons. They are different missions. Different functions, different responsibilities. And we utilize those vehicles somewhat differently.

**Rep. Jordan:** I do understand what you've just described, but the data in front of us is not talking about average miles on vehicles of different departments. It says number of 100,000, just a flat over 100,000 and it's these different percentages. So if you have a vehicle with 140 or one with 200, they're still over 100. They're still going to count as the same in this chart that you all provided us. So I still don't quite understand what might be going on here. Maybe DOA has some information, I don't know but I want to move on to the other question if I could Mr.



Chairman. The other question was, and you touched on it I think in your comments. My specific question, is there a definition of not safe to operate? And if that truly is not safe to operate as an average person on the street would think of that term, why is that vehicle being used if in fact it is being used? If it's not safe to operate?

**Commissioner Guice:** I think when we took a close look at our vehicles, we looked at and talked with our staff and asked them about the maintenance issues with that vehicle. We also wanted to know the mileage of that vehicle. And we also took into consideration where they worked. For example, in Wilkes and Watagua and those areas, those are mountainous regions. The wear and tear on that vehicle as you well know would be greater than some other areas of the state etc. And I think the concern is, when we have a vehicle that we have problems with, it's repaired and within a week or two later we have further problems. And if those problems relate to the electrical system, which seems to in so many of these reports I was reading last night, so many of them they were just driving down the road at 50 miles an hour and the vehicle stopped. Well that stopping affects the brakes, the power steering, so forth. So we consider that a potential danger to that operator. We have to get it and get it fixed. I think that's why they're taking up so many of the vehicles. Because of the history of the vehicle. I think they look at the history and they make that decision. But here's my problem. My problem is you just took a vehicle from us. I've got a staff member that's required to statute to take care of this population. And if that staff member is not able to do that, if you say well hey we've got another vehicle in the county. Well know I've got two officers in the county. How do you flip a coin to decide who's going to do their office visits or home visits, and who's going to run to pick a parolee up at a prison and you know Justice Reinvestment Act is dumping 15,000 felons back into the community. More than we had in the past. Who's going to make that decision? So I've got officers that can't do their job. Then to make it even worse, if we're in Avery County and they've taken our four-wheel-drive vehicles, and we don't get those replaced, we got potential life and death issues that I'm concerned about as it relates to our staff. I will tell you that we look closely at the maintenance history of the vehicle. I think DOA does that also. I think you look closely at the miles on that vehicle. I think that whatever has occurred that's caused us not to replace vehicles, or has caused us to drive vehicles longer. And I will say this to you. A K-car, or a Chevette, someone will laugh at me, that's what we had at one time. They gave us Chevetts at one time. But those smaller, medium sized cars that really aren't set up for some of what we do in this business, a Geo-Tracker? I think it's a four-cylinder; it was out in Cherokee County. Was it safe? It had rust through the floor board and the door handles were taped on with duct tape. I don't think it was safe. So, my answer is. I think we've got to study it. I've



got to have some resolve pretty quick, because I've got officers out there who are trying to take care of these caseloads that can't take care of the caseloads. And we've got vehicles that I truly believe are a hazard to our staff and others. Remember this. If I could pay them all mileage and ask them to drive their car, one would ask can I do that? How can I do that? They're not passenger vehicles. They're loading an offender up that they've arrested. Or they're transporting an offender. You can't do that type of thing. But in reality, also, I mean I guess the other option is we can give them a donkey or a horse or something. I'm sure we can do that in Watauga County. I mean, heck. But we're going to have to do something.

**Chairman Goolsby:** Commissioner Guice, we hear you. We are getting close to five-o'clock which is our stopping time, but we do need to hear from the Department of Administration folks. I will let the members know that the last item on the list, the DPS conflicts of interest report we're going to hear at some later date. It will not be today. Rep. Stevens, if you'd like to address one question and then we will move on to the DOA folks.

**Rep. Stevens:** And it's really more of a request. As we're reviewing this situation it would be helpful following-up with Rep. Jordan, if they would give us a specific definition of what they consider unsafe. And perhaps the 28 pages he got from his staff people who said these vehicles are unsafe and here's the reason, so those 28 pages may answer a lot of questions from us.

Chairman Goolsby thanked Commissioner Guice for his presentation and said the next presenter would be Dee Jones, the Chief Operating Officer at the Department of Administration, and after her Speros Fleggas, Deputy Secretary of the Department of Administration. Sen. Daniel reminded Chairman Goolsby that he inquired about the disposition of assets from correction facilities being closed at the last meeting, and that the chairs indicated a willingness to put the issue on for a report from the department. Sen. Daniel said he thought it was overlooked and pointed out it was on page 31 of the minutes from the last meeting. Chairman Goolsby said the chairs would possibly put that on for the next meeting, but the committee would get to his issue if not at the next meeting. Chairman Goolsby directed staff to get that report in before the next meeting. Rep. Stevens said while the committee discussed future meetings, she would like to get a much further report from the Office of Indigent Defense Services. She said she is hearing word that people are bidding for the packages, proposing to pay \$40-\$45 per case and there would be no hourly billing. She said she was concerned about ineffective assistance of counsel situations. Chairman Goolsby said that item was on for the next meeting but the final decision was up to Rep. Hurley.





Chairman Goolsby recognized Dee Jones, Chief Operating Officer of the Department of Administration, for a presentation. (See Attachment 9 for a copy of the presentation).

After her remarks, Chairman Goolsby asked Ms. Jones a question to begin committee discussion.

**Chairman Goolsby:** I have a question. Regarding the requirements you told us, the three months of operating costs to have that on hand. Is that a requirement that we put on you here statutorily, or where does that come from? Do you know?

**Ms. Jones:** It's our fiscal office requirement, because without operating cash in a timing of the flow of funds, we might not be able to pay our employees and operate.

**Chairman Goolsby:** That's your own internal, setup rule. Ok, thank you, any questions from the members?

**Rep. McNeill:** I have two if I could ask them right quick. Thank you for your presentations. First question is on fuel. Are we still buying bulk fuel in all state cars, filling up at state sites? Or do we have any situations where we're using fleet cards and they're allowed to fill up at any regular service station? And then also, as the purchase of vehicles, is the federal bid usually a little lower on cars? Or do you usually get a better deal on a state bid and is it possible to piggyback off the federal bit when you're purchasing? I don't know if they get better prices or not, but that's the two questions.

**Ms. Jones:** I'll actually defer to Mr. Fleggas for those answers.

**Chairman Goolsby:** Please state your name for the record sir and you may answer.

**Speros Fleggas:** Speros Fleggas, Deputy Secretary with the Department of Administration. Motor fleet did an analysis about fuel purchases. We had the motor pool still purchase bulk fuel off a state contract that every agency uses that uses fuel. We do have a system of credit cards and the analysis indicated that we would actually pay less in fuel costs by allowing folks to use credit cards, get rebates off these credit cards and the like. It kind of made no sense for someone to drive 20 miles out of the way to go to a fueling facility given the cost of fuel and the gas mileage.

**Rep. McNeill:** Thank you, that's what I was getting at.



Chairman Goolsby thanked Ms. Jones for her remarks and said Mr. Fleggas would present to the committee next. (See Attachment 9 for a copy of the presentation).

Chairman Goolsby recognized Rep. Burr to begin committee discussion with Mr. Fleggas.

**Rep. Burr:** Thank you Mr. Chairman. We were talking earlier about the \$85 million that DPS has paid in over the five years, and \$70 million of that I'm not 100% sure where that's gone. Can you just clarify for me, because you say you have \$35 million or so, \$27 million can be used for purchasing cars. When an agency writes you a check or transfers money over to pay for vehicles, to pay for repairs, those types of things, are you keeping note of each agency that does that? Are you keeping those funds going to that particular agency? Or is DPS writing you an \$84 million check and you're just spending the money wherever you all deem to spend it versus what we've appropriated, the General Assembly, for each individual area of the budget.

**Ms. Jones:** We do have accurate billing records, so we know exactly what has been paid in by which agency. And when you have a fleet pool, you basically, especially in the circumstances we've experienced, we have not necessarily paid out exactly whatever DPS paid in and went right back out. We don't keep it in a separate pool just for DPS. However, you could see from the money spent that DPS is getting a larger proportionate share of those replacement vehicles relative to the percentage of the total billing that they've been paid in.

**Rep. Burr:** That appears to be the case now. I guess certainly you're making up for the amount of money that they've sent over to DOA over the years. I would like to certainly see that broken down, and my position as a budget chair, you know if we appropriate money for a particular area whether it's DOT or JPS or any other area and we appropriate it for the motor fleet pool, I would assume that when that money is going out for that particular area that it's staying in there and that DOA isn't using those funds as a slush fund to put it wherever they deem necessary. That's something those individual departments should be coming back here to the General Assembly and having us make that determination versus that being made somewhere else. Which is why I'm sure we certainly want to make sure that DPS is receiving the appropriate number of cars that they need.

**Rep. Jordan:** Thank you for the presentation. Halfway through I heard a lot of information about data and repair history and so forth and that made me feel very good. But then at the end there's a cryptic remark about challenges with data management. Can you explain further? Do we have the data to keep up with these vehicles or do we not?



**Ms. Jones:** We do, we have lots of data. We have a system that has been in place for years and it's got all the data about every vehicle that's been in the fleet from the beginning. Sometimes in aggregate, to pool lots of data and lots of reports, it's a little bit cumbersome. And we have to pull them on an ad-hoc basis. But the data is very good. And we can produce for any vehicle a repair history.

**Mr. Fleggas:** Representative Jordan, Sperros Fleggas. Yes, we keep accurate cost analysis on each vehicle. I can tell you to the penny what has been spent on every vehicle – gas, maintenance, repairs, parts etc. We do have that data. The data referenced in the report I think is going back to what the PED committee was talking about in terms of the use of telematics. And that is, having the data so you can tell where the vehicle is going, where it's been, how long it's sat, how fast it was going, and those kinds of things. It was PED, my opinion was they were leading to a point that with this kind of data, you could better judge the usage of a vehicle. Back in late 2010 and early 2011, for those that were around, there was a pretty expensive report done by a local television station regarding vehicles that were sitting for months and not being driven. And it had to do with the utilization of those vehicles. Why an agency had a vehicle that was sitting and not being used, was that cost efficient? Of course it wasn't. But I think that's what kind of prompted a lot of this emphasis to more or less monitor what the utilization of the vehicle is, so you can tell if an agency really needs it. Are they using it for its intended purpose, or are they going to the post office once a day? That kind of situation.

**Rep. Boles:** Thank you. You mentioned, I'm glad you had a report on the vehicle that caught on fire. Was that vehicle under your DOA maintenance, or is that, I guess I was wondering if that was one of your contractors that fixed it. If so, I hope we don't put other employees in danger.

**Mr. Fleggas:** The answer, or the response is, if a vehicle is in need of repair, the individual assigned the vehicle essentially has a responsibility either to bring it into service or take it somewhere to service. The repair garage that did the work, I don't have that information but I'm sure I could get that information for you.

**Rep. Boles:** So the probation officer has to go out and repair their own car, and find somebody to do it?

**Mr. Fleggas:** Yes sir. When a vehicle is assigned to an individual, it's kind of no different than getting a car from Hertz, Avis or Enterprise. Once the vehicle leaves the yard, we really don't know exactly how it's used or to make sure that the person is doing what they need to. So the individual assigned the vehicle for that use has some responsibility to keep up with what's



needed for the vehicle, and to also see that it is properly serviced and the inspections are done on a timely manner. Motor fleet does not have the ability at this time to keep track of every time a vehicle needs an oil change. We get a monthly report of the mileage, and when a vehicle goes over its mileage for example for an oil change, a notice will be sent. But it's data that's not real time.

**Rep. Boles:** That's really not what I was asking. If this was hit by a deer, surely there was an accident report. Surely if you're saying that the probation officer has got to go out and get three estimates like every other person to fix the headlight, surely not.

**Mr. Fleggas:** No sir, no sir. There weren't three estimates. You carry it to a repair shop. A phone call is made to motor fleet, who then, if the repairs are within a reasonable cost, they have the experience to authorize a repair right at that time. So it's not going out as a traditional way in a private vehicle where you would need to get three estimates and the like.

**Rep. Boles:** One other question, now I'm looking at if you drive a state vehicle, 10% is going to be trying to keep it up, of your time instead of production. The other thing, you mentioned data, and you're telling me you have the data and know everything about this car. What is DPS trying to create that you don't already have? I'm just a dumb old businessman and it looks like you're trying to retread a tire here and it's going to take 18 months to retread a tire. What are they going to do that you're not going to do? I mean I just don't understand. If you had the data to break everything down.

**Ms. Jones:** This is Dee Jones I'd like to respond. By partnering with DPS on the implementation of an ERP system that has a very good motor fleet system, we will have an integrated financial system that will have the financial backbone. So today, we have to go out and create manual invoicing through our fleet system. There is no debit and credit model with that. So you don't have, you have to manually track the receivables. With an integrated ERP system, we will have a dual entry system with every transaction. So we will be able to bill and track every single transaction with these.

**Mr. Fleggas:** I think, and Drew is experienced with the DOT fleet there. They have their own repair garages for the most part. Highway Patrol has their own repair garages. Motor fleet management operates on the way that we let the private sector for the most part, because vehicles are all in 100 counties scattered across the state, we rely on individual dealers and private repair shops, the private sector, to provide repairs when needed. It makes no sense to drive a vehicle



from Asheville to Raleigh for an oil change or to repair the brakes and get new brakes. That's certainly cheaper up there and more cost effective to do it up there where the person drives it.

**Rep. Burr:** I'd kind of like to put George Cleveland on this as an honorary member. He looks like he has a whole lot more questions than I have.

**Rep. McNeill:** Thank you Mr. Chairman. I'm sure that fuel cost is a considerable amount of what we pay each year in keeping our fleet going. So you just told this committee earlier that you already know that it's cheaper to use credit cards and let people buy it out in the community than buying bulk fuel. What do we need to do, is that something the Department of Administration can do to change this, does the legislature need to do something? Because if we can save money there, we need to be heading in that direction. And then also please answer the last question I asked, is there any advantage to piggybacking off of the federal system in purchasing cars?

**Mr. Fleggas:** The fuel, oil, at one point in time we were using DOT maintenance yards and fuel tanks and the like. There was a source of a little bit of concern because there was an administrative fee tacked on every time a state vehicle under motor fleet used those facilities. I think it was determined through analysis that it would be less costly for us to go to a private service station and get fuel. By the way, the gas tax under this system that we have, is deducted. So none of the state vehicles gassing up at any private station is charged for the fuel tax. With regards to purchasing.

**Rep. McNeill:** Hold on one second. Why are we not moving towards that system then? Getting away from buying bulk fuel and using a credit card system? Does the legislature need to pass some legislation to do that or is that something you can do in DOA?

**Mr. Fleggas:** The bulk fuel purchases are done for the entire state. So it's a term contract put out that's available for the university system, DOT, everyone that has tanks. So no. And you're not charged, you don't charge yourself an administrative cost. It may well indeed be less expensive to continue the current practice.

**Rep. Stevens:** Thank you Mr. Chair. Rep. Boles asked enough questions that got me confused. So this lady who has her car hit by a deer and she takes it somewhere else to get it fixed. What happens? Does then a record or report come to you and that's how you know exactly what happened, and it was to that vehicle? In essence, do you like have a file on that vehicle? You



reimburse for that vehicle, or you pay directly and make arrangements to pay for that vehicle. That's how you know what's with each vehicle? That's what I'm trying to get clear.

**Mr. Fleggas:** That's correct. The repair authorization comes in from a dealer or a garage. They do not have to pay at that time. The garage invoices motor fleet management separately. The department makes payments. I can tell you, I had a flat tire on I-40 in a state vehicle. I called up, they told me to go to a certain tire repair shop. They put a brand new tire on the car and I was back on the way. That's kind of how the system works.

**Rep. Burr:** Thank you again Mr. Chair. Ms. Jones, in your presentation, I'm curious to see how both of you felt about this. You obviously advocate for a centralized fleet. But in terms of your fleet compared to that of those vehicles broken out through DPS, certainly the Highway Patrol and DOT, do you believe that your vehicles are in better shape than that of those that are broken out and maintained by the individual departments?

**Ms. Jones:** Had we been able to spend money on a regular basis, a relatively stable amount of money over the years, I believe we would have been absolutely in as good of shape. But when \$80 million, and not the same \$80 million that's been paid in by DPS, but when \$80 million is taken out of the system for purchasing vehicles over these last 5 years. Actually the \$80 million was taken out over like a three year period. That puts us in a pretty big hole.

**Rep. Burr:** But you are sitting on \$27 million that you could spend today.

**Ms. Jones:** That is correct and we intend to do so when the purchasing window with the manufacturers opens up.

**Rep. Hurley:** Thank you Mr. Chair. Deputy Fleggas, I had been told before that two of our vehicles had been out of commission. I just talked to the head of our probation parole, and he says they're still not back. He said they were taken to local people but then the motor fleet came and got them and they've been out of commission since June. Then there was a wreck yesterday, so that's going to be three vehicles out of commission. So I would like an answer by tomorrow if possible.

**Mr. Fleggas:** I can probably tell you now, more than likely the vehicles were scheduled to be surplus. That's probably why nothing has been replaced. We are, right now, we just had the bids received and the contracts awards for the purchase of vehicles this model year. And the slide up there indicated we are really prepared to purchase 1,330 vehicles. I've got my finger on



the button to push the requisition right now. A large part of those vehicles are destined to replace vehicles at DPS. So it has to do with the model year. Obviously there is a cutoff for ordering vehicles. That occurs in the spring. You can't get vehicles; you do the best you can. Manufacturers stop production to retool, those kinds of things. And that's what somewhat causes a delay in being able to get a vehicle to immediately replace a vehicle.

**Rep. Hurley:** Is there any protocol for letting the agency know exactly what's going on? I mean, here they've been waiting. I had asked or inquired a month or so ago and had not followed-up, my fault. But now we have this, and I really think that someone needs to let them have some communication there.

**Chairman Goolsby:** Thank you, I did have a question why the department would pick up a car for surplus before a replacement was available? Why would that happen? I would think the car would be repaired.

**Mr. Fleggas:** Yes sir. There probably just wasn't one simply available. You've seen I think the record as to kind of where we are today. We're trying our best now to climb out of the hole and get as many new vehicles as we can. To get on a stable replacement cycle so this issue will not occur in the future.

**Chairman Goolsby:** That would be nice. Rep. Boles, you had a question about how the state vehicles are insured.

**Rep. Boles:** Are we self-insured, or how? I'm still confused about this lady who hit a deer. That she still had to go get her car repaired and they didn't have to come. They just called you and you just wrote a check.

**Mr. Fleggas:** Yes, we are self-insured. But by law we are required to carry liability insurance. That bill alone varies but it is generally around \$5 million a year. So if a driver of a state vehicle is at fault, Traveler's Insurance handles it on behalf of the state. If the other driver is at fault, we recover the loss of funds from the driver's insurance company. If it's just an accident such as running off the road or hitting a deer, we are self-insured and motor fleet just eats the loss.



There being no further business, the meeting adjourned at 5:28 p.m.

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Sen. Thom Goolsby

Presiding

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Joseph Kyzer, Committee Clerk

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